THE HONOURABLE SRI JUSTICE J. CHELAMESWAR
AND
THE HONOURABLE SRI JUSTICE D. APPA RAO

W.P.No. 1511 of 2006

Dated: 24.08.2006

Between:-

M.V.S. Suryanarayana Raju s/o Veerabhdra Raju, 1st Mythri Apartments, Beside Sridevi Children Hospital, Sarpavaram Juncture, Kakinada-5

…PETITIONER

And

1. Commercial Tax Officer, Tuni, East Godavari District,
2. Deputy Commercial Tax Officer, Ptapuram, East Godavari District
3. Deputy Commissioner (CT), Kainada, East Godavari District
4. The Kirlampudi Sugar Mills Limited, Pitapuram, East Godavari District, represented by its Managing Director.

..RESPONDENTS

THE HONOURABLE SRI JUSTICE J. CHELAMESWAR
AND
THE HONOURABLE SRI JUSTICE D. APPA RAO

W.P.No. 1511 of 2006

O R D E R (per Hon'ble Sri Justice J. Chelameswar)

The writ petition is filed with the prayer as follows:-

> "This Hon'ble Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the 3rd respondent in canceling the public auction conducted and held in favour of the petitioner on 29.12.2005 in respect of the company guest house of the 4th respondent situated at Pithapuram, East Godavari District for recovery of the arrears of Sales Tax as illegal, arbitrary, high handedness and contrary to Section 37-A of the Revenue Recovery Act and set aside the same and direct the respondents 1 to 3 to confirm the sale in favour of the petitioner and register the auctioned property in favour of the petitioner."

The facts leading to filing of the writ petition are that, the 4th respondent fell in arrears of tax due under, the Andhra Pradesh General Sales Tax Act, 1957 (for short 'the APGST Act'). For recovery of the said arrears of Rs. 28,58,830/-, the property of the 4th respondent (guest house situated at Pitapuram, East Godavari District) was brought to sale under the provisions of the Revenue Recovery Act, 1864. On more than one occasion, the sale was intercepted by the 4th respondent invoking the jurisdiction of this Court under Article 226 of the Constitution of India. It may not be necessary to go into the details of various orders passed by this Court earlier, but suffice to say that this Court stayed the auction on more than one occasion on condition that the 4th respondent makes certain payments towards the arrears of the tax, but the

4th respondent never complied with those conditional orders. Therefore, the 2nd respondent once again issued an auction notification, dated 19-12-2005, calling upon the interested persons to make an appropriation application. The relevant portion of the auction notification reads as follows:-

" OFFICE OF THE COMMERCIAL TAXES DEPARTMENT: THUNI
EAST GODAVARI DISTRICT.
OPEN AUCTION NOTIFICATION

This is to inform to the public that for the purpose of collection of due amount along with interest from M/s Kirlampudi Sugar Mills Limited, Pithapuram, the authorities are decided to put open auction of the property of Guest House and its open place on 29.12.2005 at 12100 am at Thuni Commercial Taxes office.

Name of defaulter	Time of auction	Particulars of property	Value of Property
The Kirlampudi Sugar Mills Ltd. Pithapuram	29.12.2005	The guest house belongs To Defaulter which is situated at Pithapuram Kakinada main road in an extent of 2698 sq. mtrs of RCC building, tiled house and open land which is having boundaries of East: Chennai-Howra Railway track West: Petrol bunk belsongs to Bharat Petroleum Corpn. South: Pithapuram-Kakinada Road North: Nursing Home (Part) & Bharat Petroleum Corpn. Ltd. Petroleum bunk (part)	Rs. 63,19,740/-

The value of the above property is decided by the Sub-Registrar, Pithapuram as on 1st July, 2005 and also having the property value declaration. Hence, the Government auction will be started from that Market value.

Hence, interested person can apply along with the E.M.D. at 15% on the market value i.e. Rs. 9,48,000/- in the name of D.C.T.O. Pithapuram in the shape of D.D. and the D.D. must be drawn from any Nationalised Bank. For further details you can contact at any reasonable dates and timings at the concerned office.

Yours
G. RATNA GIRI BABU
Asst. Commercial Taxes Officer,
Pithapuram

Place: Thuni
Dt. 19-12-2005

Initially, under the notification, the auction was scheduled on 19-10-2005, but however, the same could not take place on that day. A

further notification was published by the 2nd respondent fixing the auction on 29-12-2005 at 11.00 a.m. The upset price of the property was fixed at Rs. 63,19,740/-. The writ petitioner who responded to the notification filed his bid and deposited 15% of the bid price. Apart from the petitioner, 14 others also participated in the said auction. Eventually, it so happened that the petitioner offered highest bid of Rs. 70,50,000/- and the auction was declared in his favour. Admittedly, the petitioner paid the entire amount in terms of the conditions of the auction notice. The details of payment are admitted by the 2nd respondent in his counter affidavit at paras 6 and 7.

The petitioner, thereafter, requested the respondents 1 and 2 to confirm the auction in his favour and convey the property. However, the respondents did not convey the property to the petitioner. In the meanwhile, the petitioner came to know that the 3rd respondent issued proceedings canceling the abovementioned auction. The petitioner asserted on oath in the writ petition at

para-6 that such a decision was taken by the 3rd respondent without any prior notice to him and he came to know about such a decision through a daily newspaper ('Eenadu' Telugu newspaper), dated 23.1.2006. Hence, the writ petition.

The 2nd and 3rd respondents filed their counter affidavits. The 2nd respondent admitted all the material allegations made by the petitioner. He further stated in the counter affidavit that, on receipt of the entire amount of sale consideration from the petitioner, he informed the same to the 3rd respondent on 06-01-2006 and requested the 3rd respondent to confirm the auction as per Section 38(3) of the Revenue Recovery Act, 1864. It is further stated by the 2nd respondent in his counter affidavit as follows:-

> "It is submitted that the Dy. Commissioner (CT) Kakinada in Ref.G3/114/94, dt. 6-1-2006 cancelled the auction sale held on 29-12-2005, which was received in this office on 9-1-2006. It is submitted that, the Deputy Commissioner (CT) Kakinada

> granted installments to the 4th respondent in ref. G3/1146/94, dt. 6-1-2006. These orders were sent to the first respondent's office in duplicate for causing service on the dealer. The same was served on Sri Ks. Veerabhadra Rao, Accountant of the Sugar Mill on 16-01-2006."

The 3rd respondent filed a separate counter. According to the 3rd respondent, subsequent to the issuance of the auction notice by the 2nd respondent, the 4th respondent requested the Commissioner of Commercial Taxes to grant him three installments to pay the entire amount of tax arrears due. It is further stated in the counter that, the request of the 4th respondent was accepted by the Commissioner of Commercial Taxes. No proceedings of the Commissioner granting such installments in favour of the

4th respondent are placed before the Court nor even a reference of the same is made in the counter affidavit filed by the

3rd respondent. The 3rd respondent further stated that the telephonic instructions of the Commissioner of Commercial Taxes had been communicated by him to the 1st respondent and instructed the 1st respondent to postpone the auction. A pleading in this behalf is, as vague as it can be, at para-3 and it reads as follows:-

> " The request of the 4th respondent had been considered by the Commissioner of Commercial Taxes. In fact my office has also communicated the telephonic instructions of the Commissioner of Commercial Taxes on the even day itself i.e, 29-12-2005 to the first respondent to postpone the auction on certain conditions specified by the Commissioner of Commercial Taxes, Hyderabad well in advance. However, contrary to the above, the first and second respondents have conducted the auction of the 4th respondent's guest house on 29-12-2005."

In the proceedings, dated 6-1-2006, of the 3rd respondent, by which the Deputy Commissioner communicated to the Managing Director of the 4th respondent-company, the alleged decision of the Commissioner, Commercial Taxes, dated 29-12-2005, to grant installments in favour of the 4th respondent, a reference is made to the telephonic instructions of

Commissioner, Commercial Taxes, Hyderabad, dated 29-12-2005. The proceedings of the

3rd respondent, dated 6-1-2006, reads as follows:-

"PROCEEDINGS OF THE DEPUTY COMMISSIONER (CT): KAKINADA
PRESENT: SRI AHMAD NADEEM, I.A.S.

Ref: G3.1146/94, Dated: 06-01-2006

Sub:- The Kirlampudi Sugar Mills Ltd.s, Pithapuram – Auction of their guest House is cancelled – The dealer's request is accepted and Installments granted – Orders – Regarding.

Ref: 1) Representation filed by the dealer requesting for grant of install-Ments addressed to the Commissioner (CT) Hyderabad, Dated 28-12-2005.
2) Telephonel instructions of the Commissioner (CT), Hyderabad dated 29-12-2005.
3) Telephonic instructions of the DC (CT) Kakinada, dt.29-12-2005 and DC (CT) Ref. No. G5/1146/94, dt. 30-12-2005.
4) CTO, Tuni Ref. B6/1323/2000, dt. 30-12-2005.

:::

O R D E R

Sri C. Raghuram, Managing Director of M/s Kirlampudi Sugar Mills Limited, Pithapuram are assesses on the rolls of the Commercial Tax Officer, Tuni and fell in arrears of interest of Rs. 28,58,830-00 under APGST Act, 1957, for the year 1994-95. The dealer requested for grant of installments vide his representation in the reference 1st cited.

As per the instructions of the Commissioner (CT), Hyderabad, dt. 29-12-2005, the request of the dealer is considered and it is hereby ordered for grant of installments as detailed below under Section 16(3) of the APGST Act, 1957.

Installment No.	Month	Amount	payable in the month
1		Rs. 10,00,000/--	Immediately
2	January, 2006	Rs. 9,29,415-00	In Jan, 2006
3	February,2006	Rs. 9,29,415-00	In February, 2006
TOTAL		Rs. 28,58,830-00	+ Interest due thereon along with the expenses of auction as the auction is postponed at his request.

(Rupees Twenty eight lakhs fifty eight thousand eight hundred and thirty rupees only)

The dealer is hereby informed that failsure to pay the installments granted within the time specified, the whole of the amount then remaining unpaid may be recovered from him as if it were an arrear of land revenue. The dealer shall give a commitment to the assessing authority to pay the arrears.

The above order does not preclude to levy the interest under Section 16(3) of the APGST Act, 1957 and are issued without prejudice to any action under Section 17 of APGST Act, 1957 or Revenue Recovery Act, 1864 already initiated.

Sd/-

Adhmed Nadeem, I.A.S.
Deputy Commissioner (CT)
Kakinada

`

//true copy//

sd/- J.Srinivasa Rao,
Manager (FAC)

To
Sri C.Raghauram, Managing Director,
M/s Kirlampudi Sugar Mills Ltd., Pithapuram,
Copy to the Commercial Tax Officer, Tuni in duplicate for causing service on the dealer and resubmission of served copy.
Copy submitted to the Commissioner (CT), Hyderabad."

Except the *ipso dixit* of the 3rd respondent that the Commissioner of Commercial Taxes granted installments in favour of the 4th respondent, there is no other material on record to establish that the Commissioner of Commercial Taxes passed such an order. The respondents did not produce any material in this regard. The 3rd respondent further states in the counter affidavit that apart from the alleged instructions of the Commissioner, Commercial Taxes, not to proceed with the auction of the property in question, certain complaints including several adverse news items published on the manner of conduct of the auction, were received, but it is not specified, by whom and what is the nature of the complaint. The counter of the 3rd respondent in this regard reads as follows;-

> "It is submitted here that the auction was not conducted in a proper manner and the whole auction took place contrary to the instructions of higher authorities. Even workers of the 4th respondent who are opposing the auction were removed by taking the help of Police. In view of the above irregularities I have ordered the cancellation of auction/sale proceedings recorded in favour of the petitioner who participated in the auction/sale proceedings recorded in favour of the petitioner who participated in the auction/sale held on behalf of Government of Andhra Pradesh under the powers vested in me under section 38 of the Revenue Recovery Act and accordingly I have communicated the same to the first respondent to take necessary further auction under Revenue Recovery Act."

Therefore, the 2nd respondent issued the proceedings referred to earlier

cancelling the auction.

Three questions arise for consideration of this Court in this case,

(1) the authority of the 3rd respondent to cancel the auction already conducted?

(2) Whether such power was exercised in accordance with the known procedure established by law?

(3) Assuming for the sake of argument that the Commissioner of Commercial Taxes has the authority to grant installments and the 3rd respondent has the necessary authority to cancel the auction already conducted; whether such a power could be exercised after the entire sale consideration has been received by the respondents acting on behalf of the State of Andhra Pradesh ?

Before we answer the said questions, one more question is to be examined; assuming for the sake of argument that the Commissioner of Commercial Taxes had in fact granted installments in favour of the 4th respondent, which, as a matter of fact, (as already noticed) has not been established, Whether such a power can be exercised by the Commissioner when once the property of defaulting dealer is brought to sale under the provisions of the Revenue Recovery Act.

The learned Government Pleader for Commercial Tax appearing for the respondents pointed out Section 16 (2) of the APGST Act, as the source of power authorizing the Commissioner, Commercial Taxes to grant installments in favour of defaulted dealer. The said section reads as follows:-

Sec. 16 (2) (a)

" Notwithstanding anything contained in sub-section (1), on an application made by the assessee, the Deputy Commissioner may, by an order, allows extension of time for payment of tax, penalty or other amount due under this Act, or permit the payment thereof, in such installments, within such intervals and subject to such conditions as he may specify in the said order, having regard to the circumstances of each case."

From a reading of the above sub-section it appears that the power to such grant installments is vested only in the Deputy Commissioner, Commercial Taxes by the statute. It is doubtful whether

such a power could be exercised by the Commissioner of Commercial Taxes in the absence of any specific authorization under the law. We do not wish to express any final opinion in the matter, having regard to the fact that we found nothing on record to establish that the Commissioner of Commercial Taxes did, in fact, exercised such power.

Coming to the authority of the 3rd respondent to cancel the auction already conducted, the learned Government Pleader for Commercial Tax, relied upon Section 38 of the A.P. Revenue Recovery Act, 1864, which reads as follows:-

> "**Application to set aside sale:-** (1) At any time within thirty days from the date of sale of the immovable property, application may be made to the Collector to set aside the sale on the ground of some material, irregularity, or, mistake or fraud, in publishing or conducting it; but, except as otherwise as hereinafter provided no sale shall be set aside on the ground of any such irregularity or mistake unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reasons thereof.
>
> (2) If the application be allowed, the Collector shall set aside the sale and may direct a fresh one.
>
> (3) *Order confirming or setting aside sale*: - On the expiration of thirty days from the date of the sale, (if no application to have the sale set aside is made under Section 37-A or under Clause (1) of this section) or if such application has been made and rejected, the Collector shall make an order confirming the sale provided that, if he shall have reason to think that the sale sought to be set aside notwithstanding that no such application has been made or on ground other than those alleged in any application which has been made and rejected, he may, after recording his reason in writing set aside the sale.
>
> (4) *Refund of deposit or purchase-money when sale set aside:-* Whenever the sale of any lands is not so confirmed or is set aside, the deposit or the purchase-money, as the case may be, shall be returned to the purchaser.
>
> (5) *On confirmation of sale, purchaser's name to be registered:-* After the confirmation of any such sale, the Collector shall register the lands sold in the name of the person declared to be the purchaser and shall execute and grant a certificate of sale bearing, his seal and signature to such purchaser.
>
> (6) *Certificate of sale* :- Such certificate shall state the property sold and name of the purchaser, and it shall be conclusive evidence of the fact of the purchase in all Courts and Tribunals, where it may be necessary to prove the same; and no proof of the Collector's seal or signature shall be necessary, unless the authority before whom it is produced shall have reason to doubt its genuineness.

Admittedly, the powers of the Collector under Section 38 of the Revenue Recovery Act are conferred upon the Deputy Commissioner of Commercial Taxes, while bringing the properties to sale, for recovery of arrears of tax due, under Section 17-C of the APGST Act. An examination of Section 38 of the Revenue Recovery Act discloses that the power to set aside the same can be exercised on an application made to the Collector/Deputy Commissioner, Commercial Taxes on the ground of some material irregularity or mistake or fraud in conducting the same and further, that mere existence of a material irregularity or mistake or fraud, in publishing or conducting the same by itself is not the only factor for cancelling the sale, but such an auction must have had resulted in a substantial injury to the person who is filing the application to set aside the same. Under Sub-section (3) the Collector/Deputy Commissioner, Commercial Taxes is authorized to *suo motu* set aside the sale notwithstanding the fact that there was an application in that behalf, but such power is required to exercise for the reasons to be recorded in writing.

There is no material on record to establish that the 4th respondent ever made any application to set aside the same. In spite of service, the 4th respondent never chose to file counter affidavit nor does the order dated. 06-01-2006 of the 3rd respondent make any reference to any application made by the 4th respondent. Obviously, the decision was taken by the 3rd respondent on his own, in which case the decision is referable to sub-section (3) of Section 38 of the Act, which obligates the 3rd respondent to record the reasons for such a decision. The order, dated 06-1-2006, insofar as it is material for the present purpose reads as follows:

"PROCEEDINGS OF THE DEPUTY COMMISSIONER (CT): KAKINADA
PRESENT: SRI AHMAD NADEEM, I.A.S

Ref. G3/1146/94, Dated: 06-01-2006

Sub: R.R. Act 1864 – Attachment of property of M/s Kirlampudi Sugar Mills Ltd. Pithapuram situated in D.No.11-1-45, Pithapuram – Auction held on 29-12-2005 – Auction is cancelled – Orders – Issued – Reg.

Ref: 1) Telephonic instructions of DC (CT), Kakinada dt. 29-12-2005
2) Representation filed by the dealer requesting for grant of installments addressed to CCT, Hyderabad, dt. 29-12-2005.
3) This office Ref. G5/1146/94, dt. 30-12-2005
4) CTO, Tuni ref. B6/1323/2000, dt. 30-12-2005.

O R D E R

With reference to the Commercial Tax Officer, Tuni's reference 4th cited and in pursuance to the proceeding recorded during the course of auction sale held on 29-12-2005 and sale under Section 38 of the R.R. Act, I hereby order the cancellation of the auction/sale proceedings recorded on 29-12-2005 in favour of Sri M.V.S.Suryanarayana Raju, who participated in the auction sale held on behalf of Government of Andhra Pradesh.

The Commercial Tax Officer has conducted the auction in spite of specific instructions issued by the higher authorities to postpone the auction on certain conditions and also several adverse news items on the manner and conduct of auction besides under valuation and it is not conducted in a transparent manner.

The Commercial Tax Officer, Tuni is requested to take necessary further action under R.R. Act to repay to the purchaser the purchase money so far, as it has been deposited together with five per centum deposited by the bidders.

Sd/[Ahmad Nadeem, I.A.S.
Deputy Commissioner(CT)
Kakinada.

//True copy//

Sd/- J. Srinivasa Rao
Manager (FAC)

To
The Commercial Tax Officer,
Tuni,
Copy to the Commissioner (CT) Hyderabad
Copy to the Collector, East Godavari District, Kakinada.

The reasons, if they can be called as reasons at all, are to be seen in paragraph-2 of the above extracted proceedings. Barring a bald assertion that the auction was conducted contrary to the specific instructions of the higher authorities and a reference to some vague adverse news items, no reason worth-being called as in the eye of law, is recorded by the 3rd respondent.

The 3rd respondent does not even refer to the fact that the Commissioner of Commercial Taxes had issued the orders granting

installments in favour of the 4th respondent. Interestingly, the only material on record to show that some installments were granted in favour of the 4th respondent is the proceedings of the 3rd respondent, which was also dated 06-01-2006, and the same was already taken note of, earlier. If the 3rd respondent really received the instructions from the Commissioner, Commercial Taxes to stop the auction proceedings in the instant case and also informed of the grant of installments in favour of the 4th respondent on 29-12-2005, this Court fails, to simply, understand as to why the 3rd respondent took one week's time to communicate the same decision in writing both to the 4th respondent and to the petitioner. All these factors make the Court to draw an inference that both the proceedings, dated 06-01-2006, issued by the 3rd respondent are not issued *bona fide*.

As admitted, by 04-01-2006 the entire amount of sale consideration was paid by the petitioner, the details of which are admitted in the counter-affidavit of the 2nd respondent. In such a case, the cancellation of the auction is not permissible.

Dealing with the question, whether the sale conducted in execution of the decree of a civil court could be declined to be confirmed on the ground that the decree is reversed, in appeal the Supreme Court held in **Jank Raj, v. Gurdial Singh and another**[1] that the confirmation cannot be declined. At para-24 it was held as follows:-

> "For the reasons already given and the decisions noticed, it must be held that the appellant-auction purchaser was entitled to a confirmation of the sale notwithstanding the fact that after the holding of the sale the decree had been set aside. The policy of the Legislature seems to be that unless a stranger auction purchaser is protected against the vicissitudes of the fortunes of the suit, sales in execution would not attract customers and it would be to the detriment of the interest of the borrower and the creditor alike if sales were allowed to be impugned merely because the decree was ultimately set aside or modified."

No doubt, the Supreme Court was dealing with the specific provisions of the Code of Procedure in coming to such conclusion, where elaborate provisions are made regarding the conduct of sale and confirmation of the same and the objections that can be raised regarding confirmation of the sale. Neither the provisions of APGST Act, nor the provisions of Revenue Recovery Act,1864, do not make such elaborate provisions. But we do not see any reasons to take a different view in the case of sale under the Revenue Recovery Act. For the reason as it was held by the Supreme Court in the above referred decision, that the policy of the Legislature should be understood that a stranger auction purchaser must be protected against the vicissitudes of the fortunes of the suit (caprice of the higher authorities of Commercial Tax Department in the contest of the present case) otherwise such sales would not attract customers and it would be detrimental to the interest of the exchequer.

We, therefore, are of the opinion that the writ petition is required to be allowed as prayed for and the respondents be directed to convey the property purchased by the petitioner in the auction, pursuant to the notice referred to earlier. We also deem it appropriate to direct that the action of the 3rd respondent in cancelling the auction requires an examination by the State. We, therefore, direct the Chief Secretary, Government of Andhra Pradesh, to examine the matter and take appropriate action against the 3rd respondent.

The writ petition is, accordingly, disposed of. No costs.

_____

J.

CHELAMESWAR, J

_____

D. APPA

RAO,J
24th August, 2006
vp

Copy to
the Chief Secretary, Government of A.P. Hyderabad,

---

[1] AIR 1967 S.C. 608